

§ 15A-1418. Motion for appropriate relief in the appellate division.

(a) When a case is in the appellate division for review, a motion for appropriate relief based upon grounds set out in G.S. 15A-1415 must be made in the appellate division. For the purpose of this section a case is in the appellate division when the jurisdiction of the trial court has been divested as provided in G.S. 15A-1448, or when a petition for a writ of certiorari has been granted. When a petition for a writ of certiorari has been filed but not granted, a copy or written statement of any motion made in the trial court, and of any disposition of the motion, must be filed in the appellate division.

(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, whether it is necessary to remand the case to the trial division for taking evidence or conducting other proceedings, or, for claims of factual innocence, whether to refer the case for further investigation to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes. If the appellate court does not remand the case for proceedings on the motion, it may determine the motion in conjunction with the appeal and enter its ruling on the motion with its determination of the case.

(c) The order of remand must provide that the time periods for perfecting or proceeding with the appeal are tolled, and direct that the order of the trial division with regard to the motion be transmitted to the appellate division so that it may proceed with the appeal or enter an appropriate order terminating it. (1977, c. 711, s. 1; 2006-184, s. 5; 2010-171, s. 5.)